IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 24092 of 2005(R)

AGAINST THE ORDER IN IA 268 2004 IN
OS.1019/2001 of PRL.SUB COURT,THRISSUR

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PETITIONER:

M/S.K.G.INFORMATION SYSTEMS (P) LTD.,
365,THUDIYALUR ROAD,SARAVANAMPATTI,
COIMBATORE-641 035,REPRESENTED BY ITS
MANAGER (LEGAL),R.DHANUSKODI.

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENT:

M/S.INSTITUTE OF MEDICAL TRANSCRIPTION,
THRISSUR,REPRESENTED BY CHAIRMAN,
DR.BABU AHAMMED KABEER.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC 24092 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING(MoU) ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENT ON 24.2.2000.

EXT.P2 : TRUE COPY OF THE PLAINT OS 1019 OF 2001 FILED BY THE RESPONDENT BEFORE THE HON'BLESUB COURT, THRISSUR.

EXT.P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER.

EXT.P4 : TRUE COPY OF ORDER DATED 31.5.05 IN IA 268/04 IN OS 1019/2001 PASSED BY THE PRINCIPAL SUB COURT, THRISSUR.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 24092 OF 2005

Dated this the 7th day of August, 2007

JUDGMENT

Ext.P4 order under which the court below has found that it has jurisdiction to entertain and try the suit is under challenge in this Writ Petition under Article 227 of the Constitution initiated by the defendant. Ext.P2 is copy of the plaint filed by the respondent, a partnership firm stationed at Thrissur which claims to have been a business partner of the defendant-Company, the petitioner herein which is engaged in the business of software and information technology enabled services. It is averred in Ext.P2 that the petitioner-Company has achieved leadership status in medical transcription industry in the country and is presently on a massive expansion programme as a part of which only the plaintiff was also accommodated as partner. Ext.P1 is copy of the Memorandum of Understanding executed between the petitioner and the respondent and the suit is for recovery of a sum of Rs.Five lakhs which the plaintiff entrusted with the defendant as per Clause 3 of Ext.P1 on the ground that Ext.P1 has been unilaterally suspended. In Ext.P2, execution of Ext.P1 agreement its suspension and the receipt of an E-mail from the defendant-Company to stop the Training Programme which had been undertaken by the plaintiff pursuant to Ext.P1 are inter

alia mentioned as facts constituting cause of action. The suit is filed before the Thrissur Court on the basis that the E-mail regarding suspension of the training programme was received within the local limits of the Thrissur Court. Ext.P3 is copy of written statement and in para.13 it is contended that no part of the cause of action has arisen within the territorial limits of the Thrissur Court. I.A.No.268 of 2004 was filed by the petitioner for deciding issue No.2 regarding jurisdiction as a preliminary issue and Ext.P4 is the order on that I.A. holding that the Thrissur court is having jurisdiction.

2. I have heard the submissions of Sri.K.Anand, learned counsel for the petitioner and those of Smt.Sudha Babu, learned counsel for the respondent.

3. Sri.K.Anand would submit that the decision under Ext.P4 turns mainly on the language used in clause 9 of Ext.P1. Clause 9, according to the learned counsel, actually confers exclusive jurisdiction upon the Coimbatore Court and it was too much on the part of the learned Sub Judge to have held that Clause 9 confers jurisdiction on the Thrissur Court.

4. Sri.Anand would place strong reliance on the judgment of the Supreme Court in **Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.** (2004 (4) SCC 671) and submit that even in the absence of words like

"alone", "only", "exclusive" the maxim "expressio unius est exclusio alterius"[expression of one is the expression of another] can be applied. When that maxim is applied, it will be seen that there was an intention between the parties to exclude the jurisdiction of any court other than those at Coimbatore. Counsel also submitted that construing the very same clause, it was held by the Thiruvananthapuram Sub Court in OS No.104 of 2003, that the Coimbatore court alone is having jurisdiction and the present decision has already attained finality. All the submissions of Sri.Anand were strongly resisted by Smt.N.Sudha, counsel for the respondent-plaintiff.

5. I have considered the rival submissions made at the Bar. I have carefully gone through the judgment of the Supreme Court in **Hanil Era Textiles'**s case(Supra) and I have considered the ratio of the Supreme Court judgment in **Angile Insulations v. Davy Ashmore India Ltd**. (1995 (4) SCC 153), **A.B.C. Laminart (P) Ltd. v. A.P. Agencies** [1989 (2) SCC 163] and also the judgment of the Supreme Court in **Hakam Singh v. Gammon (India) Ltd.** [1971 (1) SCC 286], the three decisions considered by the Supreme Court in **Hanil Era Textiles'**s case(Supra). I have carefully gone through the impugned order also. It is true that the Supreme Court has held that usage of expressions like

"alone" "only" "exclusive" etc. are not absolutely necessary for construing an ouster clause as one ousting the jurisdiction of courts other than the one mentioned in that clause and that when the ouster clause is clear unambiguous and specific in appropriate cases the maxim "expressio unius est exclusio alterius" may be applied. The Supreme Court also held that as to what is an appropriate case shall depend on the facts of the case. Clause 17, the ouster clause, which was considered by the Supreme Court was in the following terms:

Any legal proceeding arising out of the order shall be subject to the jurisdiction of the courts in Mumbai(underlying is supplied). The ouster clause in the present case is clause 9. The same is entirely different and the same is quoted as follows:

"This agreement is governed by Indian law in all respects including formation and interpretation and shall be deemed to have been made in India. Any dispute arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in Coimbatore." The Supreme Court found in **Hanil Era Textiles'**s case on facts, i.e., a substantial part of the cause of action in that case including the first essential fact constituting the cause of action, the placement of the order had arisen at Mumbai of course it was noticed that a small part of the cause of action had arisen within the limits of the

Delhi court and in view of Section 20 C the Delhi court also will be having jurisdiction. The ouster clause was interpreted to hold that on the facts the maxim “expressio unius est exclusio alterius” had to be applied. As already indicated, the ouster clause in the present case only provides that any dispute arising out of or in connection with the agreement may be brought in a court in Coimbatore. On the basis of the averments in Ext.P2 plaint I find that the substantial part of the cause of action has arisen within the limits of the Trichur court and in my opinion, the instant case is not an appropriate case to which the maxim “expressio unius est exclusio alterius” can be applied. More so, since it is an expression “may” which indicates an option and not “shall” indicating an obligation which is used. It was too much on the part of the learned Subordinate Judge to say that clause 9 confers jurisdiction on the Trichur court. The impugned order is sustainable since the Trichur court is also having jurisdiction in view of Section 20 C of the CPC and since Clause 9 does not oust the jurisdiction of the Trichur court. The Writ Petition fails and the same will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

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